

ALITO, J., concurring

SUPREME COURT OF THE UNITED STATES

**RICARDO SALAZAR-LIMON v. CITY OF
HOUSTON, TEXAS, ET AL.**

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 16–515. Decided April 24, 2017

The petition for a writ of certiorari is denied.

JUSTICE ALITO, with whom JUSTICE THOMAS joins, concurring in the denial of certiorari.

Every year the courts of appeals decide hundreds of cases in which they must determine whether thin evidence provided by a plaintiff is just enough to survive a motion for summary judgment or not quite enough. This is one such case. Officer Thompson stated in a deposition that he shot Salazar-Limon because he saw him turn toward him and reach for his waist in a movement consistent with reaching for a gun. Record, Doc. 39–2, pp. 29–30, 33. Remarkably, Salazar-Limon did not state in his deposition or in an affidavit that he did not reach for his waist, and on that ground the Court of Appeals held that respondents were entitled to summary judgment. 826 F. 3d 272, 278–279 (CA5 2016).

The dissent disagrees with that judgment. The dissent acknowledges that summary judgment would be proper if the record compelled the conclusion that Salazar-Limon reached for his waist, but the dissent believes that, if the case had gone to trial, a jury could have reasonably inferred that Salazar-Limon did not reach for his waist—even if Salazar-Limon never testified to that fact. The dissent’s conclusion is surely debatable. But in any event, this Court does not typically grant a petition for a writ of certiorari to review a factual question of this sort, see this Court’s Rule 10, and I therefore concur in the denial of

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review here.

I write to put our disposition of this petition in perspective. First, whether or not one agrees with the grant of summary judgment in favor of Officer Thompson, it is clear that the lower courts acted responsibly and attempted faithfully to apply the correct legal rule to what is at best a marginal set of facts.

Second, this Court applies uniform standards in determining whether to grant review in cases involving allegations that a law enforcement officer engaged in unconstitutional conduct. We may grant review if the lower court conspicuously failed to apply a governing legal rule. See this Court's Rule 10. The dissent cites five such cases in which we granted relief for law enforcement officers, and in all but one of those cases there was no published dissent. *White v. Pauly*, 580 U. S. ___ (2017) (*per curiam*); *Mullenix v. Luna*, 577 U. S. ___ (2015) (*per curiam*); *Taylor v. Barkes*, 575 U. S. ___ (2015) (*per curiam*); *Carroll v. Carman*, 574 U. S. ___ (2014) (*per curiam*); *Stanton v. Sims*, 571 U. S. ___ (2013) (*per curiam*). The dissent has not identified a single case in which we failed to grant a similar petition filed by an alleged victim of unconstitutional police conduct.

As noted, regardless of whether the petitioner is an officer or an alleged victim of police misconduct, we rarely grant review where the thrust of the claim is that a lower court simply erred in applying a settled rule of law to the facts of a particular case. See this Court's Rule 10. The case before us falls squarely in that category.

This is undeniably a tragic case, but as the dissent notes, *post*, at 8 (opinion of SOTOMAYOR, J.), we have no way of determining what actually happened in Houston on the night when Salazar-Limon was shot. All that the lower courts and this Court can do is to apply the governing rules in a neutral fashion.

SOTOMAYOR, J., dissenting

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JUSTICE SOTOMAYOR, with whom JUSTICE GINSBURG joins, dissenting from the denial of certiorari.

Just after midnight on October 29, 2010, a Houston police officer shot petitioner Ricardo Salazar-Limon in the back. Salazar-Limon claims the officer shot him as he tried to walk away from a confrontation with the officer on an overpass. The officer, by contrast, claims that Salazar-Limon turned toward him and reached for his waistband—as if for a gun—before the officer fired a shot. The question whether the officer used excessive force in shooting Salazar-Limon thus turns in large part on which man is telling the truth. Our legal system entrusts this decision to a jury sitting as finder of fact, not a judge reviewing a paper record.

The courts below thought otherwise. The District Court credited the officer’s version of events and granted summary judgment to respondents—the officer and the city. 97 F. Supp. 3d 898 (SD Tex. 2015). The Fifth Circuit affirmed. 826 F. 3d 272 (2016). But summary judgment is appropriate only where “there is no genuine dispute as to any material fact.” Fed. Rule Civ. Proc. 56(a). The courts below failed to heed that mandate. Three Terms ago, we summarily reversed the Fifth Circuit in a case “reflect[ing] a clear misapprehension of summary judgment standards.” *Tolan v. Cotton*, 572 U. S. ___, ___ (2014) (*per curiam*) (slip op., at 10). This case reflects the same fundamental error. I respectfully dissent from the Court’s failure to grant certiorari and reverse.

SOTOMAYOR, J., dissenting

I

The encounter at issue here occurred around midnight on October 29, 2010, on the outskirts of Houston, Texas. Salazar-Limon, who had been drinking, was driving with three other men down Houston's Southwest Freeway. Houston Police Department Officer Chris Thompson was manning a speed gun on the freeway that night and spotted Salazar-Limon's truck weaving between lanes. He turned on his lights and sirens, and Salazar-Limon pulled over and stopped on the shoulder of an overpass. Thompson walked over to the window of Salazar-Limon's truck and asked for his driver's license and proof of insurance, which Salazar-Limon provided. Thompson checked Salazar-Limon's license and found no outstanding warrants.

When Thompson returned to the truck, the incident quickly escalated. Thompson asked Salazar-Limon to step out of the truck—apparently intending to conduct a blood alcohol test—and the two men began to walk together toward Thompson's patrol car. Although the men dispute the details of what happened next, they agree that Thompson tried to put Salazar-Limon in handcuffs; that Salazar-Limon resisted; and that a brief struggle ensued. At the end of the struggle, Salazar-Limon turned away and began to walk back to his truck, his back to Thompson. Thompson drew his firearm and told Salazar-Limon to stop walking.

What matters is what happened next, and here the men tell different stories. According to Salazar-Limon, Thompson shot him “immediately”—at most, within “seconds” of the oral command. Record, Doc. 39–1, p. 8. Salazar-Limon testified that when the bullet hit his back, he began to turn toward Thompson and then fell to the ground. *Ibid.* Thompson's version of the story differs. According to Thompson, when he told Salazar-Limon to stop walking, Salazar-Limon raised his hands toward his waistband—as if for a weapon—and turned toward him. *Id.*, Doc. 39–2,

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at 29. Thompson testified that he shot Salazar-Limon only “[o]nce he made the motion towards his waistband.” *Ibid.* Salazar-Limon, in other words, claims that Thompson shot him in the back while he was walking away. Thompson claims that Salazar-Limon provoked the shot by turning toward him and reaching for what he thought was a gun.

Salazar-Limon survived the encounter but sustained crippling injuries. In 2011, he sued Thompson, the city of Houston, and various police officials, alleging violations of his constitutional rights. Respondents removed the case to federal court and moved for summary judgment, arguing that Thompson was protected by qualified immunity.¹ Respondents emphasized that, in their view, even viewed in the light most favorable to Salazar-Limon, the facts did not support an excessive-force claim:

“Thompson was dealing with a suspect who physically resisted arres[t] while the two stood on a dimly lit overpass of a busy expressway; he was alone with Salazar-Limon and [three] other suspects, all of whom he had not searched; Salazar-Limon disobeyed Thompson’s orders to stop and proceeded to walk in the direction of his truck[,] which had not been searched either.” *Id.*, Doc. 31, at 20.

Respondents did not cite Thompson’s allegation that Salazar-Limon had turned and reached for his waistband, at least not in any part of their motion that relied only on undisputed facts; rather, they relied on the facts *preceding* the alleged turn and reach to argue that Thompson acted reasonably under the circumstances. See *id.*, at 13–14

¹The city also argued that Salazar-Limon had failed to plead a claim for supervisory liability against it under *Monell v. New York City Dept. of Social Servs.*, 436 U. S. 658 (1978). The District Court granted summary judgment to the city, and although Salazar-Limon argued on appeal that it erred in doing so, he does not renew that contention here.

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